

EXHIBIT 5

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DOROTHY ANDERSON and DEMARQUION
MERRILL, as Co-Personal
Representatives of the Estate of
BOBBY MERRILL, deceased,

Plaintiffs,

Case No. 13-11159

-v-

HON. THOMAS LUDINGTON

OFFICER JEFF MADAJ,
individually, OFFICER JUSTIN
SEVERS, individually, OFFICER
BRIAN GUEST, individually, and
OFFICER STEVEN WIETECHKA,
individually,

Defendants.

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The Deposition of STEVEN M. WIETECHKA, taken
before Timothy J. Boroski, RPR/CSR-2378 and Notary Public in
and for the County of Clinton, acting in the County of
Saginaw, State of Michigan, at the offices of Ripka, Boroski &
Associates, 1 Tuscola Street, Suite 301, Saginaw, Michigan, on
Thursday, April 24, 2014, commencing at or about 9:10 a.m.

<p style="text-align: right;">Page 14</p> <p>1 had deployed his taser and it had no affect on the</p> <p>2 suspect.</p> <p>3 Q Okay. I'm looking at a copy of a report that appears to</p> <p>4 have been authored by you. It looks like you heard over</p> <p>5 the radio that there was breaking and entering in</p> <p>6 progress on Glenwood?</p> <p>7 A Correct. That was unrelated.</p> <p>8 Q You went to assist. Started to head that way?</p> <p>9 A Correct.</p> <p>10 Q While en route, Officer Severs pulled onto South</p> <p>11 Washington and Gilmore. Reference a man that was jumping</p> <p>12 out in traffic and walking in the road?</p> <p>13 A Correct.</p> <p>14 Q All right. Is that what you understood that you were</p> <p>15 going to be encountering?</p> <p>16 A While en route?</p> <p>17 Q Yes.</p> <p>18 A Yes.</p> <p>19 Q Then it says R/O, that's reporting officer?</p> <p>20 A Correct.</p> <p>21 Q "Heard shots fired over the radio, reference Glenwood</p> <p>22 Street Reporting officer then went emergency mode and</p> <p>23 started toward Glenwood. Then heard Officer Severs</p> <p>24 advise he needed officers to assist quickly."</p> <p>25 A Correct.</p>	<p style="text-align: right;">Page 16</p> <p>1 Q What if they are crossing a street?</p> <p>2 A Then they can cross a street in designated crosswalk.</p> <p>3 Q Did you have any understanding en route whether</p> <p>4 Mr. Merrill was doing anything inappropriate in being in</p> <p>5 the street?</p> <p>6 A Well, there was multiple 911 calls from motorists</p> <p>7 advising that he was in the road.</p> <p>8 Q Did you hear them?</p> <p>9 A No, central dispatch advised.</p> <p>10 Q Did you report that anywhere?</p> <p>11 A No, it's all -- in central, anything central dispatch</p> <p>12 reports is documented.</p> <p>13 Q Okay. But what I'm asking is, did you hear what central</p> <p>14 dispatch was reporting?</p> <p>15 A Yes.</p> <p>16 Q Okay. Why don't you document in your report what you</p> <p>17 heard central dispatch report?</p> <p>18 A Because it's documented on their end if it's ever needed.</p> <p>19 Q What were they reporting?</p> <p>20 A I don't recall everything. That was over two years ago.</p> <p>21 I mean, I'll try to remember everything I can.</p> <p>22 Q I'm wondering is, did you think that you were,</p> <p>23 specifically, that I'm going -- because you said this was</p> <p>24 obviously a disorderly person?</p> <p>25 A The way that Officer Severs was asking for more cars,</p>
<p style="text-align: right;">Page 15</p> <p>1 Q "R/O then went and started toward South Washington and</p> <p>2 Gilmore." Is that what you recall?</p> <p>3 A Correct.</p> <p>4 Q Do you recall anything else about what you heard over the</p> <p>5 radio?</p> <p>6 A No, not at this time I don't recall.</p> <p>7 Q Does that information that you wrote indicate that you</p> <p>8 believe that there was a crime in progress?</p> <p>9 A Yes.</p> <p>10 Q What crime?</p> <p>11 A Well, he was obviously acting disorderly, okay? And</p> <p>12 Officer Severs was asking for cars like to step it up.</p> <p>13 Come quickly. If somebody is complying and acting</p> <p>14 appropriately, an officer doesn't get over the air</p> <p>15 distressed saying I need cars now.</p> <p>16 Q All right. Jumping out in traffic and walking in the</p> <p>17 road. Walking in the road, is that a crime?</p> <p>18 A Yes.</p> <p>19 Q What's the crime?</p> <p>20 A Walking in the street where a sidewalk is provided is a</p> <p>21 civil infraction in the State of Michigan.</p> <p>22 Q Are pedestrians precluded from walking on the street if</p> <p>23 there is a sidewalk?</p> <p>24 A If there are sidewalks in the City of Saginaw -- in the</p> <p>25 State of Michigan, yes.</p>	<p style="text-align: right;">Page 17</p> <p>1 yes.</p> <p>2 Q So was it the time that he asked for more cars that you</p> <p>3 concluded there must be a disorderly person?</p> <p>4 A That there must be something wrong, yes. Someone is not</p> <p>5 complying with something if he's asking for multiple</p> <p>6 units in the way that he was asking, yes.</p> <p>7 Q Okay. Was it the tone of his voice?</p> <p>8 A The tone of his voice. The way he was asking for cars to</p> <p>9 step it up. Get here now, quickly. When that happens,</p> <p>10 we know to go now. Something is wrong.</p> <p>11 Q Something could be a person is hit by a car?</p> <p>12 A If somebody is hit by a car, you couldn't advise multiple</p> <p>13 units to step it up. He would be advising central to</p> <p>14 have a rig step it up. Not for more patrol units to</p> <p>15 come.</p> <p>16 Q Now, in your training either on-the-job or in the</p> <p>17 academy, were you trained that you would encounter</p> <p>18 different types of people? And by that I mean maybe</p> <p>19 somebody with a psychiatric condition?</p> <p>20 A Sure, yes.</p> <p>21 Q Maybe somebody that is under the influence of a</p> <p>22 substance?</p> <p>23 A Correct.</p> <p>24 Q How does that affect your response to a situation such as</p> <p>25 this where you're concluding that he was obviously</p>

(Pages 14 to 17)

<p style="text-align: right;">Page 18</p> <p>1 disorderly?</p> <p>2 A I don't understand exactly what you're asking.</p> <p>3 Q Okay. Do you have a consideration when somebody is</p> <p>4 obviously disorderly that perhaps there could be a</p> <p>5 psychiatric condition, or that the person may be under</p> <p>6 the influence of a substance?</p> <p>7 A Yes.</p> <p>8 Q Does that affect, that understanding or consideration,</p> <p>9 affect how you respond to the situation?</p> <p>10 A Depending on the situation. It's hard to say yes or no</p> <p>11 on that.</p> <p>12 Q Okay. What does it depend upon?</p> <p>13 A What crime has been committed? Who is at risk? You</p> <p>14 know, who is in danger of any sort?</p> <p>15 Q All right. Who was in danger on April 10th of 2012, if</p> <p>16 anybody?</p> <p>17 A Himself, other officers, motorists.</p> <p>18 Q Why were other motorists in danger, based upon what you</p> <p>19 knew?</p> <p>20 A I was advised he reached into motorists' vehicles in an</p> <p>21 attempt to gain access into them. I was also advised he</p> <p>22 attempted to gain access into Officer Severs' patrol car.</p> <p>23 Q Who advised you that he tried to gain access into a</p> <p>24 vehicle?</p> <p>25 A Either Officer Severs. I believe it would be him. I</p>	<p style="text-align: right;">Page 20</p> <p>1 A Yes.</p> <p>2 Q Why was he a danger to himself?</p> <p>3 A Because he was in the roadway. That's a very busy road</p> <p>4 in the middle of the day.</p> <p>5 Q All right. So when you responded, did you view the role</p> <p>6 of the Saginaw Police Department to provide any type of</p> <p>7 assistance to Mr. Merrill or did you view the role to</p> <p>8 arrest Mr. Merrill?</p> <p>9 A I assumed the role to, basically, secure the scene and</p> <p>10 make safe for all parties involved. My initial role was</p> <p>11 backup as an officer was asking for assistance now.</p> <p>12 Q All right. I want to go back to the force continuum for</p> <p>13 a minute. One of the things that you said about using a</p> <p>14 taser was that the person starts running away?</p> <p>15 A You can use that on that, correct.</p> <p>16 Q Okay. Are you aware of Mr. Merrill at any time running</p> <p>17 away?</p> <p>18 A Not running away, no.</p> <p>19 Q Did you ever put your hands-on Mr. Merrill?</p> <p>20 A During the course of the altercation?</p> <p>21 Q Yes.</p> <p>22 A Yes.</p> <p>23 Q You use altercation. What do you mean by altercation?</p> <p>24 A The fact that he was refusing to comply with commands.</p> <p>25 Q What commands that you gave did he refuse to comply with?</p>
<p style="text-align: right;">Page 19</p> <p>1 don't recall exactly.</p> <p>2 Q Were there any people on scene at any time during the day</p> <p>3 that you interviewed or talked to that said that</p> <p>4 gentleman tried to get into my vehicle?</p> <p>5 A I would have to refer to my prior -- I interviewed one</p> <p>6 gentleman, Mr. Turner. (Examining document). He advised</p> <p>7 he tried to get into Officer Severs' patrol car.</p> <p>8 Q Were there any private citizens that remained on scene</p> <p>9 that said that gentleman had tried to get into my car?</p> <p>10 MR. REISING: That this witness is aware of?</p> <p>11 MR. FELTY: That he's aware of.</p> <p>12 THE WITNESS: That I'm aware of, no. I didn't</p> <p>13 interview anybody but the one gentleman.</p> <p>14 Q (BY MR. FELTY) Do you know of other people that were</p> <p>15 interviewed, private citizens who said that --</p> <p>16 A I remember there was Dodge Avenger there with -- I</p> <p>17 believe it was an Avenger. Don't me quote on that. Like</p> <p>18 a small vehicle. I would have to assume that somebody</p> <p>19 spoke with them.</p> <p>20 Q Do you know if it was a man or a woman?</p> <p>21 A I don't recall.</p> <p>22 Q All right. And Mr. Merrill, he was a danger to</p> <p>23 himself --</p> <p>24 A Yes.</p> <p>25 Q -- potentially?</p>	<p style="text-align: right;">Page 21</p> <p>1 A When I first arrived on scene, I told him to show us --</p> <p>2 put his hands up and get on the ground, and he refused to</p> <p>3 do so.</p> <p>4 Q Had he been tased, to your knowledge, before you got on</p> <p>5 the scene?</p> <p>6 A No. Well, Officer Severs deployed his taser, but he</p> <p>7 advised to me that he had no -- there was no connection.</p> <p>8 It did not work.</p> <p>9 Q Did you see leads?</p> <p>10 A Leads?</p> <p>11 Q Electrical wires from probes.</p> <p>12 A When I arrived on scene?</p> <p>13 Q Yes.</p> <p>14 A No.</p> <p>15 Q Do you know if -- you said they had been deployed, or he</p> <p>16 told --</p> <p>17 A He advised he had deployed his cartridges and he was out.</p> <p>18 Q How many cartridges did your tasers at Saginaw Police</p> <p>19 Department have?</p> <p>20 A One.</p> <p>21 Q So if one was fired, then you would have to reload it?</p> <p>22 A Correct.</p> <p>23 Q So was it your understanding that he deployed one</p> <p>24 cartridge or one set of cartridges?</p> <p>25 A He deployed three cartridges.</p>

(Pages 18 to 21)

<p style="text-align: right;">Page 22</p> <p>1 Q And didn't hit any time?</p> <p>2 A He said it had no effect.</p> <p>3 Q Did he tell you -- you said that there was no connection?</p> <p>4 A What I would have to assume if there was no effect.</p> <p>5 Q But you never saw any leads whatsoever?</p> <p>6 A Not that I recall.</p> <p>7 Q Do you recall seeing any -- do you call them darts or</p> <p>8 probes?</p> <p>9 A Probes.</p> <p>10 Q Do you recall seeing any probes?</p> <p>11 A Not at that time, no. I was focusing on a larger scale.</p> <p>12 Q What color were the probes?</p> <p>13 A They would be silver.</p> <p>14 Q Did you see probes at any time?</p> <p>15 A Yeah.</p> <p>16 Q When did you see probes?</p> <p>17 A When I had to deploy my taser and my probes -- after the</p> <p>18 altercation was done.</p> <p>19 Q You deployed yours?</p> <p>20 A I did.</p> <p>21 Q Where did yours go? Where did they impact?</p> <p>22 A I don't know -- recall exactly where they impacted.</p> <p>23 Q Did you remove them?</p> <p>24 A I did not, no.</p> <p>25 Q Do you know who did?</p>	<p style="text-align: right;">Page 24</p> <p>1 or the taser units themselves, are you aware of any video</p> <p>2 of the incident that officers from the Saginaw Police</p> <p>3 Department obtained?</p> <p>4 A Video? Not that I'm aware of.</p> <p>5 Q Have you seen any video?</p> <p>6 A Just from the -- my patrol car and my taser cam.</p> <p>7 Q When did you see the video from your patrol car?</p> <p>8 A It was days after the incident. I don't know. I'm not</p> <p>9 sure of the timeline.</p> <p>10 Q What do you remember your patrol car showing?</p> <p>11 A Just the back seat.</p> <p>12 Q The back seat of what?</p> <p>13 A My patrol car.</p> <p>14 Q The video camera from your patrol car showed the back</p> <p>15 seat?</p> <p>16 A Correct.</p> <p>17 Q Why did the video camera from your patrol car show the</p> <p>18 back seat of your patrol car?</p> <p>19 A When it came on, that's what it was recording. The</p> <p>20 camera was malfunctioning that day. It was supposed to</p> <p>21 be on. Our cameras are supposed to go on when we turn</p> <p>22 the emergency mode on and it's supposed to show up front.</p> <p>23 My camera never turned on.</p> <p>24 Q How did it show the back seat?</p> <p>25 A I turned the camera on. And when it powered on, that's</p>
<p style="text-align: right;">Page 23</p> <p>1 A I would have to assume the medical personnel.</p> <p>2 Q Did you actually see the probes that you deployed even</p> <p>3 though you don't recall specifically where they made</p> <p>4 impact?</p> <p>5 A Did I see them?</p> <p>6 Q Yes.</p> <p>7 A No.</p> <p>8 Q At any time did you see any other probes?</p> <p>9 A Not that I recall.</p> <p>10 Q Do you recall a probe going into Mr. Merrill's shoe or</p> <p>11 foot?</p> <p>12 A No.</p> <p>13 Q Are you saying it didn't happen or you don't recall?</p> <p>14 A I don't know. I don't know if it did or not.</p> <p>15 Q Do you know if his shoe came off?</p> <p>16 A I don't remember that.</p> <p>17 Q Do you know if anybody that observed the incident was</p> <p>18 taken into custody?</p> <p>19 MR. REISING: Anybody who observed the</p> <p>20 incident?</p> <p>21 MR. FELTY: Yes.</p> <p>22 MR. REISING: Meaning a bystander?</p> <p>23 MR. FELTY: Yes.</p> <p>24 THE WITNESS: Not that I am aware of.</p> <p>25 Q (BY MR. FELTY) Other than video footage from patrol cars</p>	<p style="text-align: right;">Page 25</p> <p>1 what came on. Not the front.</p> <p>2 Q Where is the lens located?</p> <p>3 A Just behind the cage. At least it was. I don't know</p> <p>4 where they are mounding them now. I don't work there</p> <p>5 anymore.</p> <p>6 Q So there was a camera lens showing the back seat and a</p> <p>7 camera lens somewhere else on the car?</p> <p>8 A It would be on the windshield, a dash cam, pointing</p> <p>9 forward.</p> <p>10 Q Had you had problems with your dash cam before that?</p> <p>11 A The whole -- yeah. There was problems with them.</p> <p>12 Q I mean yours, specifically. What car were you in?</p> <p>13 A That -- I drove different cars every day.</p> <p>14 Q That day, what car were you in?</p> <p>15 A 1133 I believe it was. I'd have to refer to my report.</p> <p>16 (Examining document). Correct, 1133.</p> <p>17 Q How often had you used that car? Strike that.</p> <p>18 How often had you used that car before?</p> <p>19 A I don't know.</p> <p>20 Q Do you recall ever having problems with the dash cam with</p> <p>21 that car?</p> <p>22 A Not that I recall.</p> <p>23 Q Where was your car facing that day?</p> <p>24 A When I arrived on scene?</p> <p>25 Q Yes.</p>

(Pages 22 to 25)

<p style="text-align: right;">Page 30</p> <p>1 A To them.</p> <p>2 Q -- to them?</p> <p>3 A Yes.</p> <p>4 Q Did you hear Officer Severs saying anything to Mr. Merrill?</p> <p>5 A No, not at that time. Officer Severs yelled at me that his taser cartridge didn't work.</p> <p>6 Q Did you know Bobby Merrill?</p> <p>7 A No.</p> <p>8 Q Had you ever seen him?</p> <p>9 A No, not that I recall.</p> <p>10 Q All right. So Officer Severs said his taser cartridge did not work?</p> <p>11 A Correct. He said he deployed his taser -- he deployed his taser. He's out of cartridges and it had no effect on him. It did not work.</p> <p>12 Q Was Mr. Merrill still standing with his hands raised?</p> <p>13 A But when I got out of the car, he tucked his hands down into his person.</p> <p>14 Q Did you say anything to him?</p> <p>15 A When I got out of the car, I -- I advised him to either -- I thought -- I believe I told him to get on the ground. Yeah, I advised him to get on the ground.</p> <p>16 Q As soon as you got out of the car?</p> <p>17 A Well, after -- pretty much simultaneously getting out,</p>	<p style="text-align: right;">Page 32</p> <p>1 stance?</p> <p>2 A He was facing Officer Severs.</p> <p>3 Q Okay.</p> <p>4 A If I recall correctly, I believe he was.</p> <p>5 Q How were his legs positioned?</p> <p>6 A I don't remember that.</p> <p>7 Q Now, if somebody were getting down to the ground, would you agree they would have to move their arms?</p> <p>8 A They have to move their arms, yeah.</p> <p>9 Q Down toward their chest?</p> <p>10 A Down towards below their waist as they're going to go down and put their hands-on the ground.</p> <p>11 Q So down past the chest and towards the ground?</p> <p>12 A Correct. Not in towards their chest, though. It would be down and out.</p> <p>13 Q But they would have to move their hands?</p> <p>14 A They would have to move their hands, yes.</p> <p>15 Q What caused you to yell, "Get down to the ground"?</p> <p>16 A The fact that he was not complying with Officer Severs.</p> <p>17 Q I thought you said you didn't hear Officer Severs say anything?</p> <p>18 A He advised on the radio that --</p> <p>19 Q But that was before you got there?</p> <p>20 A Correct.</p> <p>21 Q All right. So you got there, and what you observed was</p>
<p style="text-align: right;">Page 31</p> <p>1 walking up. Officer Severs telling me. I'm observing him as I'm basically yelling at him to -- giving him verbal commands to get on the ground.</p> <p>2 Q All right. What happens first? You get out of your car?</p> <p>3 A Um-hum.</p> <p>4 Q And as you get out of your car, do you observe any changes in what Mr. Merrill is doing?</p> <p>5 A Yeah, he pulled his hands in.</p> <p>6 Q Was that before or after you said get on the ground?</p> <p>7 A I don't recall the -- that would have been before, actually. Because he did it like right as I got out of my car.</p> <p>8 Q Where did he pull his hands down to?</p> <p>9 A Just into his body. Kind of in like a fighting stance in front of his chest.</p> <p>10 Q What's a fighting stance? Describe the fighting stance.</p> <p>11 A Hands and fists in front of your chest.</p> <p>12 Q How far was Officer Severs from him at that point?</p> <p>13 A Maybe a few feet. A couple feet.</p> <p>14 Q Like within punching distance, or no?</p> <p>15 A No, I don't believe so.</p> <p>16 Q All right. Did you believe that Officer Severs was in danger of being punched?</p> <p>17 A Potentially.</p> <p>18 Q And was Mr. Merrill facing at anybody in that fighting</p>	<p style="text-align: right;">Page 33</p> <p>1 him standing with his hands raised?</p> <p>2 A Correct.</p> <p>3 Q And you were getting out of the car and you saw him tucking in his arms?</p> <p>4 A Correct.</p> <p>5 Q You hadn't heard Officer Severs say anything else; is that true?</p> <p>6 A Not at that point.</p> <p>7 Q All right. So --</p> <p>8 A That I recall.</p> <p>9 Q -- you don't know whether Officer Severs had said 'get down to the ground' or what commands he had given him?</p> <p>10 A I don't know what commands he had given him, no.</p> <p>11 Q All right. So how would you know to say get down to the ground?</p> <p>12 A To gain control and resolve the problem at hand.</p> <p>13 Q How would you know that your command was consistent with what Officer Severs may have said to him?</p> <p>14 A I don't.</p> <p>15 Q Okay. So if, for example, Officer Severs could have said, turn around, put your hands-on your head or something like that, right?</p> <p>16 A I guess he could have.</p> <p>17 Q And then you would say -- get on the scene and yelled get down to the ground.</p>

(Pages 30 to 33)

<p style="text-align: right;">Page 34</p> <p>1 A I did, yes.</p> <p>2 Q And that could be confusing to the person who is getting</p> <p>3 different commands?</p> <p>4 A I didn't hear Officer Severs give any commands at that</p> <p>5 time, so the only commands that I recall he was</p> <p>6 getting -- giving -- or getting, sorry, was mine.</p> <p>7 Q All right. What was it that necessitated him to get to</p> <p>8 the ground?</p> <p>9 A He was refusing to comply with Officer Severs, which is a</p> <p>10 felony.</p> <p>11 Q How do you know he was refusing to comply if you don't</p> <p>12 know what Officer Severs was saying?</p> <p>13 A If Officer Severs deployed his taser, there was a reason</p> <p>14 behind it.</p> <p>15 Q But it had already been deployed?</p> <p>16 A Correct.</p> <p>17 Q You didn't observe it be employed, correct?</p> <p>18 A No.</p> <p>19 Q Is that correct?</p> <p>20 A Correct, I did not.</p> <p>21 Q Did you have your -- when did you pull your taser out?</p> <p>22 A As I was telling him to get on the ground.</p> <p>23 Q How are you trained to use the taser? I mean, when</p> <p>24 you're telling somebody -- you were telling him to get to</p> <p>25 the ground and already pulling your taser out?</p>	<p style="text-align: right;">Page 36</p> <p>1 Q Where were you when you heard "I need help now"?</p> <p>2 A I don't know. I don't know.</p> <p>3 Q Were you at the scene?</p> <p>4 A In my patrol car. No, I was driving.</p> <p>5 Q Were you at the scene of the shooting?</p> <p>6 A No.</p> <p>7 Q How far from the scene of the shooting were you when you</p> <p>8 directed your car toward Gilmore and Washington?</p> <p>9 A The way I was heading, Gilmore and Washington would have</p> <p>10 been in the direction of the shooting.</p> <p>11 Q All right. So the shooting would have been further?</p> <p>12 A Further.</p> <p>13 Q So you didn't have to change your route?</p> <p>14 A No.</p> <p>15 Q What did you know about the shooting?</p> <p>16 A All I knew is that it was a home invasion in progress and</p> <p>17 I heard shots fired.</p> <p>18 Q Did you know if it was shots fired at a police officer?</p> <p>19 A At that time we didn't know.</p> <p>20 Q So was it a pretty tense situation as you were driving --</p> <p>21 A Very.</p> <p>22 Q -- to Gilmore?</p> <p>23 A Very.</p> <p>24 Q All right. So going back to the force continuum.</p> <p>25 Verbal, okay, Mr. Merrill, you never observed him run?</p>
<p style="text-align: right;">Page 35</p> <p>1 A I could be, yes.</p> <p>2 Q Why?</p> <p>3 A I don't understand, why?</p> <p>4 Q Well, there is a continuum, right?</p> <p>5 A Correct.</p> <p>6 Q First it's verbal?</p> <p>7 A Correct.</p> <p>8 Q And then it progresses to something such as either</p> <p>9 passive or one of the, I can't remember, impact devices?</p> <p>10 A Um-hum.</p> <p>11 Q Is that right?</p> <p>12 A As you go up the force continuum, yes.</p> <p>13 Q All right. So if you're pulling your taser out at the</p> <p>14 same time you're giving a verbal command, are you using</p> <p>15 two degrees of force at the same time?</p> <p>16 A No, because the force is already escalated. Because</p> <p>17 Officer Severs had already deployed his taser and was not</p> <p>18 getting any compliance from him.</p> <p>19 Q But how do you know that? That's what I'm trying to</p> <p>20 figure out, that he's not getting any compliance from</p> <p>21 him.</p> <p>22 A He went over the air and said that, that he needed help</p> <p>23 now.</p> <p>24 Q How long before you arrived was, "I need help now"?</p> <p>25 A A minute, maybe. I don't know the exact time frame.</p>	<p style="text-align: right;">Page 37</p> <p>1 A No.</p> <p>2 Q All right. He didn't strike anybody?</p> <p>3 A Not that I know of.</p> <p>4 Q All right. Did you see him move from the area where his</p> <p>5 feet were planted when you saw his hands go down to his</p> <p>6 chest?</p> <p>7 A Not that I remember.</p> <p>8 Q So he stayed in place, right?</p> <p>9 A I would -- I think so. I don't know.</p> <p>10 Q He didn't lunge at Officer Severs?</p> <p>11 A No, not I saw at that time.</p> <p>12 Q What did he do that was, other than moving his hands</p> <p>13 down, that led you to pull the taser out of your belt as</p> <p>14 you were telling him to get down to the ground, anything</p> <p>15 else?</p> <p>16 A He was refusing to comply with Officer Severs, which is</p> <p>17 he was actively resisting him. So going in, I already</p> <p>18 knew that. I deployed my -- or pulled out, I didn't</p> <p>19 deploy at that time -- pulled out my department issued</p> <p>20 taser and advised him to get on the ground in hopes to</p> <p>21 defuse the situation at that point.</p> <p>22 Q All right. He had been, to your understanding, actively</p> <p>23 resisting Officer Severs --</p> <p>24 A Correct.</p> <p>25 Q -- before you got there, right?</p>

(Pages 34 to 37)

<p style="text-align: right;">Page 38</p> <p>1 A Correct.</p> <p>2 Q And then the force continuum would start with verbal</p> <p>3 commands, correct?</p> <p>4 A Correct.</p> <p>5 Q And if verbal commands -- the goal of verbal commands is</p> <p>6 to stop active resistance; is that correct?</p> <p>7 A Correct.</p> <p>8 Q And then the next level would be, what, the passive where</p> <p>9 you use hands-on or what?</p> <p>10 A After verbal commands?</p> <p>11 Q Yes.</p> <p>12 A Yes.</p> <p>13 Q Okay. Had anybody, to your knowledge, used hands-on with</p> <p>14 Mr. Merrill?</p> <p>15 A Not that I know of.</p> <p>16 Q All right. And then below hands-on, is that the impact</p> <p>17 devices?</p> <p>18 A The --</p> <p>19 Q I'm saying below, like next.</p> <p>20 A Taser, yes.</p> <p>21 Q So hands-on, does that come before taser?</p> <p>22 A It doesn't have to, no.</p> <p>23 Q All right. When doesn't it have to? Is that like when</p> <p>24 somebody is running?</p> <p>25 A True.</p>	<p style="text-align: right;">Page 40</p> <p>1 A Correct.</p> <p>2 Q Okay. And active resistance that you personally observed</p> <p>3 was what?</p> <p>4 A When I arrived on scene?</p> <p>5 Q Yes.</p> <p>6 A He was not -- I mean, not -- I guess I didn't see</p> <p>7 anything at that time. He was standing in front of</p> <p>8 Officer Severs. The only thing I knew at that time would</p> <p>9 have been that he didn't comply with Officer Severs.</p> <p>10 Because if he would have complied he would have either,</p> <p>11 A, been in the patrol car, or B, calmly talking with</p> <p>12 Officer Severs.</p> <p>13 Q But you didn't hear any conversation, did you?</p> <p>14 A Correct.</p> <p>15 Q So there is no aggressive conversation?</p> <p>16 A That I heard at that time. As I'm out of the patrol car</p> <p>17 in the second set I was.</p> <p>18 Q Okay. Did you conceive of the possibility that perhaps</p> <p>19 the situation was deescalating and whatever degree of</p> <p>20 force had been used was starting to work by the time that</p> <p>21 you arrived?</p> <p>22 A No.</p> <p>23 Q Why wouldn't you conceive of that possibility?</p> <p>24 A Just by looking at the officer on scene and the look -- I</p> <p>25 mean, you can tell by looking at someone if there is</p>
<p style="text-align: right;">Page 39</p> <p>1 Q Okay. If somebody is standing there, is it appropriate</p> <p>2 to -- when is it appropriate to use a taser if they are</p> <p>3 standing there?</p> <p>4 A If they are not complying with you. You don't have to go</p> <p>5 hands-on.</p> <p>6 Q What determinations are you trained to consider whether</p> <p>7 to use hands-on or a taser, versus a taser?</p> <p>8 A Depends on the risk.</p> <p>9 Q Okay. What does it depend on? Give me examples of the</p> <p>10 risk.</p> <p>11 A Any potential injury to officers and/or suspect.</p> <p>12 Q Okay, potential injury. And I take it that is potential</p> <p>13 injury from a physical standpoint of hands-on?</p> <p>14 A Correct.</p> <p>15 Q As well as potential injury from the use of a taser?</p> <p>16 A Correct.</p> <p>17 Q And why in this circumstance did you believe it was</p> <p>18 appropriate to remove your taser as opposed to attempting</p> <p>19 hands-on with two officers and one gentleman?</p> <p>20 A Because he was -- at that point, I already knew that he</p> <p>21 was not compliant. And Mr. Merrill was more than double</p> <p>22 my size at that time. I could see that.</p> <p>23 Q All right. And just so we're clear, you knew that he had</p> <p>24 been actively resisting? At least that's what you</p> <p>25 believed?</p>	<p style="text-align: right;">Page 41</p> <p>1 still some sort of fear.</p> <p>2 Q Who had the fear?</p> <p>3 A You could tell Officer Severs was in some sort of fear.</p> <p>4 Q How could you tell he was in fear? What was it about him</p> <p>5 that --</p> <p>6 A The look on his face.</p> <p>7 Q -- showed his fear?</p> <p>8 What was the look?</p> <p>9 A It wasn't calm and collected.</p> <p>10 Q Did you think he was in immediate danger?</p> <p>11 A Potentially.</p> <p>12 Q What was the immediate danger?</p> <p>13 A Bobby Merrill was twice his size also. He was a big guy.</p> <p>14 Q But you didn't observe him gesture toward him?</p> <p>15 A No.</p> <p>16 Q You didn't observe any aggressive words?</p> <p>17 A No.</p> <p>18 Q You didn't see a weapon?</p> <p>19 A No.</p> <p>20 Q He didn't turn and try to run away?</p> <p>21 A No, not that I saw.</p> <p>22 Q Are hands-on techniques appropriate in close quarters?</p> <p>23 A Hands-on? Yeah, they can be.</p> <p>24 Q Give me examples of when you are trained to use hands-on.</p> <p>25 A As in like arm bars. And if someone is resisting and you</p>

(Pages 38 to 41)

<p style="text-align: right;">Page 50</p> <p>1 officer shall not?</p> <p>2 A No, I don't know that.</p> <p>3 Q All right. Are you aware of any policy that says, if one</p> <p>4 officer deploys a taser and it does work, another officer</p> <p>5 should not?</p> <p>6 A Not that I know of.</p> <p>7 Q Were you trained either, at Saginaw or at the academy,</p> <p>8 about the appropriateness of multiple tasing, or</p> <p>9 multiple -- I guess I don't know the right word -- using</p> <p>10 it multiple times on the same person?</p> <p>11 A Say that again.</p> <p>12 Q Any training that you received regarding the propriety or</p> <p>13 appropriateness of using a taser on a person multiple</p> <p>14 times?</p> <p>15 MR. REISING: I only object to the question</p> <p>16 because it assumes facts not in evidence, and it isn't</p> <p>17 defined.</p> <p>18 But go ahead. Answer the question if you can.</p> <p>19 THE WITNESS: Not that I know of. I'm not</p> <p>20 really understanding completely what you're looking for.</p> <p>21 Like are you just asking, have we been trained not to use</p> <p>22 a taser multiple times?</p> <p>23 Q (BY MR. FELTY) Yes.</p> <p>24 A Is that what you're basically asking?</p> <p>25 Q Basically.</p>	<p style="text-align: right;">Page 52</p> <p>1 Q All right. Is the purpose of using a taser to bring a</p> <p>2 person to the ground?</p> <p>3 A To gain control, yes.</p> <p>4 Q All right. To get them to the ground?</p> <p>5 A To gain control, yes.</p> <p>6 Q Okay. Is it to get them to the ground?</p> <p>7 A That's usually what happens, yes.</p> <p>8 Q All right. Is there any other purpose for using the</p> <p>9 taser, other than to gain control by getting the person</p> <p>10 to the ground?</p> <p>11 A That's the purpose, is to gain control of the suspect.</p> <p>12 Q Is it to get them to the ground?</p> <p>13 A Yes.</p> <p>14 Q All right. Is there anything else that a taser is</p> <p>15 designed to do other than to get the suspect to the</p> <p>16 ground?</p> <p>17 A It's also used for compliance.</p> <p>18 Q When somebody is on the ground?</p> <p>19 A If they are fighting on the ground and they are -- say</p> <p>20 they are not giving you their hands. You don't know,</p> <p>21 what -- obviously, they're resisting you. Then, yes, you</p> <p>22 can use the taser.</p> <p>23 Q Where were you trained that the taser is appropriate to</p> <p>24 be used on the ground, when a person is on the ground?</p> <p>25 Did anybody tell you that?</p>
<p style="text-align: right;">Page 51</p> <p>1 A Not that I know of any training like that.</p> <p>2 Q What training have you had regarding the use of a taser</p> <p>3 on the same individual more than once, if any?</p> <p>4 A None that I know of.</p> <p>5 Q Have you had any training in the appropriateness of the</p> <p>6 duration of the tasing; like the number of seconds?</p> <p>7 A Well, it's a five second cycle.</p> <p>8 Q Okay. It's a five second cycle?</p> <p>9 A That's what -- yes.</p> <p>10 Q All right. Any training or policies regarding the number</p> <p>11 of cycles that are appropriate for a particular</p> <p>12 individual?</p> <p>13 A No.</p> <p>14 Q How many times did you cycle on Mr. Merrill?</p> <p>15 A The initial one? Once.</p> <p>16 Q Okay. What does that mean, the initial one?</p> <p>17 A I attempted a second one and it had no effect.</p> <p>18 Q Did it make contact?</p> <p>19 A I don't know.</p> <p>20 Q So the first one you deployed the taser in dart or probe</p> <p>21 mode?</p> <p>22 A Correct.</p> <p>23 Q And it did have an effect?</p> <p>24 A Bobby Merrill went to the ground at that point, yes. So</p> <p>25 I would have to assume that it did.</p>	<p style="text-align: right;">Page 53</p> <p>1 A It's under the resisting.</p> <p>2 Q But, I mean, have you had training regarding whether the</p> <p>3 taser is designed to be used when a person is on the</p> <p>4 ground?</p> <p>5 A Not specifically to the ground, no.</p> <p>6 Q What do you believe that the use of a taser on a person</p> <p>7 on the ground is beneficial in doing?</p> <p>8 A Pain compliance.</p> <p>9 Q Pain compliance?</p> <p>10 A Yes.</p> <p>11 Q What does that mean?</p> <p>12 A Basically, you deploy the taser to, basically, get the</p> <p>13 person to rethink his actions and comply.</p> <p>14 Q All right. If a person -- what do you understand -- or</p> <p>15 what were you taught that the taser does?</p> <p>16 A It immobilizes a person for a duration of a five second</p> <p>17 cycle.</p> <p>18 Q Are you taught that it cause muscles to contract?</p> <p>19 A Correct.</p> <p>20 Q As opposed to relax?</p> <p>21 A Correct.</p> <p>22 Q All right. So if you're trying to get somebody's hands,</p> <p>23 do you think, or were you trained that a taser is an</p> <p>24 appropriate method to gain control of the hands?</p> <p>25 A Yes.</p>

(Pages 50 to 53)

Page 54	Page 56
<p>1 Q Why?</p> <p>2 A It's pain compliance.</p> <p>3 Q Why do you think that?</p> <p>4 A Because they are not giving you their hands. If you tase</p> <p>5 them, they rethink their actions. And to prevent</p> <p>6 further, they will bring their hands back and comply with</p> <p>7 you.</p> <p>8 Q And you still, after using the taser when a person is on</p> <p>9 the ground, if they are resisting by not giving you their</p> <p>10 hands, you still have to go hands-on?</p> <p>11 A Correct.</p> <p>12 Q Okay. Are you trained whether it is appropriate to -- or</p> <p>13 whether you should use a taser in stun mode or in the</p> <p>14 dart/probe mode if a person is on the ground?</p> <p>15 A Are you asking if we should use one or the other when</p> <p>16 they are on the ground?</p> <p>17 Q Yes.</p> <p>18 A No.</p> <p>19 Q Why would you use a taser in probe mode if a person is</p> <p>20 already on the ground?</p> <p>21 A Why would you?</p> <p>22 Q Yes.</p> <p>23 A Same reason you would use it any other time. I don't</p> <p>24 really understand what you're asking me here.</p> <p>25 Q Okay. Did you reload your taser and deploy it at</p>	<p>1 asking before or after?</p> <p>2 Q Before you pushed it again.</p> <p>3 A I believed I did. Because the first deployment brought</p> <p>4 Mr. Merrill to the ground. So, at that point, I believed</p> <p>5 I still had a good connection.</p> <p>6 Q Okay. And how long between him going to the -- or the</p> <p>7 first cycle, how long elapsed after that five second</p> <p>8 cycle and the time that you attempted to deploy it a</p> <p>9 second time?</p> <p>10 A I don't recall the exact time.</p> <p>11 Q Was it instantaneous?</p> <p>12 A No.</p> <p>13 Q What happens to a person, or what have you observed</p> <p>14 happen to a person when they are tased and it's</p> <p>15 effective?</p> <p>16 A And it is effective?</p> <p>17 Q Yes.</p> <p>18 A Their muscles contract and they tense up.</p> <p>19 Q All right. And do they freak out a little bit?</p> <p>20 A Yeah, sometimes.</p> <p>21 Q And is there a period of time designed to let them come</p> <p>22 to after being tased, or realize what happened?</p> <p>23 A Once it's done, there is really no come-to time. I have</p> <p>24 been tased, and once it's done, it's done.</p> <p>25 Q What happened to you when you were tased? What do you</p>
Page 55	Page 57
<p>1 Mr. Merrill while he was on the ground?</p> <p>2 A No, I only had one cartridge. I didn't carry a back up.</p> <p>3 Q Why did you say the first time them?</p> <p>4 A Because I attempted to use another cycle without any --</p> <p>5 basically, any reaction.</p> <p>6 Q Did you think that it didn't work?</p> <p>7 A Yes.</p> <p>8 Q Why did you think it didn't work?</p> <p>9 A Because there was no reaction when I deployed it -- or</p> <p>10 not deployed, sorry. Pulled the trigger.</p> <p>11 Q Did you think there was connection?</p> <p>12 A Fail. I believe there was a connection fail.</p> <p>13 Q Why do you believe there was a connection fail?</p> <p>14 A Because when I activated the taser again, there was no</p> <p>15 reaction.</p> <p>16 Q Why did you activate it again?</p> <p>17 A Because once he was on the ground, he was refusing to</p> <p>18 give his hands.</p> <p>19 Q Who was he going to give his hands to while he was on the</p> <p>20 ground?</p> <p>21 A Behind his back. Just pull them out from under him.</p> <p>22 Q So you were standing some distance away?</p> <p>23 A We were in very close proximity.</p> <p>24 Q Okay. But did you believe you had a connection?</p> <p>25 A No, I believed my connection was lost. Well, are you</p>	<p>1 remember?</p> <p>2 A I remember that my muscles constricted. I had no control</p> <p>3 over any of my extremities or my body, no movement. And,</p> <p>4 basically, the five second cycle, I felt the pain in the</p> <p>5 back. And once the five second cycle was done, it was</p> <p>6 over.</p> <p>7 Q Did you go to the ground?</p> <p>8 A We trained where officers hold you and bring you to the</p> <p>9 ground.</p> <p>10 Q So were you shot with a probe?</p> <p>11 A Correct.</p> <p>12 Q And where did your probes impact?</p> <p>13 A In my back and lower buttocks.</p> <p>14 Q So when it happened to you, it was one time or more than</p> <p>15 once?</p> <p>16 A One. One five second cycle.</p> <p>17 Q You had officers holding you?</p> <p>18 A Correct.</p> <p>19 Q And they lowered you to the ground?</p> <p>20 A Correct.</p> <p>21 Q Had you used a taser on an individual before April 10th</p> <p>22 of 2012?</p> <p>23 A Yes.</p> <p>24 Q How many times?</p> <p>25 A One for sure. I believe that was the only time I used</p>

(Pages 54 to 57)

<p style="text-align: right;">Page 66</p> <p>1 Steve. You gave an answer that was affirmative, but</p> <p>2 you've got to answer out loud with words.</p> <p>3 THE WITNESS: Yes.</p> <p>4 MR. REISING: Okay, thanks.</p> <p>5 Q (BY MR. FELTY) And is that because of the absence of</p> <p>6 your observation of a response?</p> <p>7 A Correct.</p> <p>8 Q Is there any other reason that you think that it didn't?</p> <p>9 A Not at that time.</p> <p>10 Q At any time?</p> <p>11 A No.</p> <p>12 Q So what commands before attempting the second cycle were</p> <p>13 given by either you or Officer Severs?</p> <p>14 A Just, "Give me your hands. Give me your hands."</p> <p>15 Q How many times?</p> <p>16 A I don't recall that.</p> <p>17 Q What did he do with his hands?</p> <p>18 A They were under his body.</p> <p>19 Q Did he move them under his body, or were they already</p> <p>20 under his body?</p> <p>21 A I don't -- I don't remember.</p> <p>22 Q All right. Because if the cycle worked the second time,</p> <p>23 would you expect, if his hands were under his body, that</p> <p>24 they would contract and remain under his body?</p> <p>25 A Um-hum.</p>	<p style="text-align: right;">Page 68</p> <p>1 A You -- I don't know --</p> <p>2 Q -- deployed the taser?</p> <p>3 A I don't know exactly where Officer Guest was. I know he</p> <p>4 pulled up simultaneous to me. Where he was when that</p> <p>5 taser was deployed the first time, I don't know.</p> <p>6 MR. REISING: First time or second time?</p> <p>7 THE WITNESS: First time.</p> <p>8 MR. FELTY: First.</p> <p>9 MR. REISING: Okay, first time. Thank you.</p> <p>10 Q (BY MR. FELTY) But by the second time, the second</p> <p>11 attempt, you believe he was there by your side?</p> <p>12 A I believe he was, yes.</p> <p>13 Q Where in relation to Mr. Merrill do you believe Officer</p> <p>14 Guest was?</p> <p>15 A I don't remember that.</p> <p>16 Q Do you recall if he ended up on the left side of</p> <p>17 Mr. Merrill or on the right side of Mr. Merrill?</p> <p>18 A I was on the left side of Mr. Merrill.</p> <p>19 Q Was anybody else with you at any time on the left side</p> <p>20 with Mr. Merrill?</p> <p>21 A I don't remember that.</p> <p>22 Q You were on the left side by the shoulder?</p> <p>23 A Correct.</p> <p>24 Q All right. You don't know what Guest did, Officer Guest?</p> <p>25 A No.</p>
<p style="text-align: right;">Page 67</p> <p>1 Q Is that yes?</p> <p>2 A Um-hum, yes.</p> <p>3 Q So the second cycle is attempted?</p> <p>4 A Attempted.</p> <p>5 Q All right. Where are you when the second cycle is</p> <p>6 attempted physically in relation to Mr. Merrill?</p> <p>7 A We were on the ground and I was to -- would be his left</p> <p>8 side.</p> <p>9 Q What part of his body?</p> <p>10 A Up by his arm, shoulder area.</p> <p>11 Q And where is Officer Severs?</p> <p>12 A I don't know. I don't recall that.</p> <p>13 Q Do you know if he was on the ground with you?</p> <p>14 A He was. And I believe Officer Guest was also.</p> <p>15 Q Do you know when Officer Guest approached during -- or</p> <p>16 arrived at Mr. Merrill during the first cycle and your</p> <p>17 attempt at the second cycle?</p> <p>18 A Pretty much simultaneously with me. He arrived within</p> <p>19 seconds of me. I don't remember which way he ran up or</p> <p>20 anything like that. I wasn't paying attention to him.</p> <p>21 Q Do you believe that Officer Guest was there in close</p> <p>22 proximity to you when you cycled the taser the first</p> <p>23 time, or when you deployed it?</p> <p>24 A I believe he was.</p> <p>25 Q All right. So you had three people there when you --</p>	<p style="text-align: right;">Page 69</p> <p>1 Q Do you know if Officer Guest used the taser?</p> <p>2 A I don't know if he did or not. I believe he did.</p> <p>3 Q Did you get shocked?</p> <p>4 A No.</p> <p>5 Q Did any other officer get shocked?</p> <p>6 A I don't know.</p> <p>7 Q How many officers ultimately cuffed Mr. Merrill, or were</p> <p>8 involved in the cuffing?</p> <p>9 A In the cuffing?</p> <p>10 Q Yes.</p> <p>11 A I believe that three other officers. I wasn't involved</p> <p>12 in the cuffing.</p> <p>13 Q All right. And I don't know how to say the fourth</p> <p>14 officer's name.</p> <p>15 A Madaj.</p> <p>16 Q Madaj. When did Officer Madaj arrive, to your</p> <p>17 recollection?</p> <p>18 A I believe he arrived as we were attempting to take</p> <p>19 Mr. Merrill into custody while we were on the ground. I</p> <p>20 don't know exactly when he arrived.</p> <p>21 Q Do you believe it was --</p> <p>22 A It was quickly.</p> <p>23 Q Do you believe it was before or after you attempted the</p> <p>24 second cycle of the taser?</p> <p>25 A I don't remember.</p>

(Pages 66 to 69)

<p style="text-align: right;">Page 70</p> <p>1 Q Do you recall Officer Madaj or Officer Guest being on the</p> <p>2 ground with you?</p> <p>3 A When?</p> <p>4 Q At any time during the --</p> <p>5 A Yes.</p> <p>6 Q Okay. At what point do you recall three other officers</p> <p>7 being on the ground?</p> <p>8 A What do you mean?</p> <p>9 Q At what point after -- okay. There is the second attempt</p> <p>10 at the cycling, right?</p> <p>11 A Correct.</p> <p>12 Q And do you believe there are three other officers there</p> <p>13 to assist in the arrest or detention?</p> <p>14 A When that second cycle was administered, I don't recall.</p> <p>15 Q Okay. Were all three other officers, to your</p> <p>16 recollection, there when Mr. Merrill was ultimately</p> <p>17 handcuffed?</p> <p>18 A All -- yes.</p> <p>19 Q How long did the entire, to your recollection, did the</p> <p>20 entire cuffing process take?</p> <p>21 A It felt like a long time, but I'm sure it was maybe a</p> <p>22 minute, two minutes. I don't know. In situations like</p> <p>23 that, it feels longer than it really is.</p> <p>24 Q All right. So you're at the left shoulder area of</p> <p>25 Mr. Merrill after the second -- the attempt at the second</p>	<p style="text-align: right;">Page 72</p> <p>1 A I don't recall the number. A couple of times with no</p> <p>2 effect. So I reholstered my baton.</p> <p>3 Q Did anybody else strike him with the baton that you're</p> <p>4 aware of?</p> <p>5 A No.</p> <p>6 Q What did you do after you reholstered the baton?</p> <p>7 A We continued struggling with Mr. Merrill.</p> <p>8 Q What did you do to attempt to gain compliance?</p> <p>9 A Just I -- at that time we just grabbed his arms and were</p> <p>10 finally able to get his hands behind his back.</p> <p>11 Q Did you ever attempt pressure points?</p> <p>12 A Not that I recall.</p> <p>13 Q Okay. The baton, that is what kind of --</p> <p>14 A Impact weapon.</p> <p>15 Q That's impact?</p> <p>16 A Um-hum.</p> <p>17 Q Is that yes?</p> <p>18 A Yes.</p> <p>19 Q Before using the baton, are you aware of anybody using</p> <p>20 any type of pressure point or striking --</p> <p>21 A I'm not sure what the other officers were doing.</p> <p>22 Q Do you know where your knee was when you were using the</p> <p>23 baton?</p> <p>24 A I don't remember that.</p> <p>25 Q Did you use any knee strikes?</p>
<p style="text-align: right;">Page 71</p> <p>1 cycle?</p> <p>2 A Yes, I believe so.</p> <p>3 Q All right. What did you do after the attempted cycling</p> <p>4 the second time?</p> <p>5 A Well, as soon as I determined that either, A, I lost a</p> <p>6 connection or, B, my first connection didn't even work,</p> <p>7 or one of the wires got caught, I just reholstered my</p> <p>8 taser.</p> <p>9 Q All right. You reholstered it and then what?</p> <p>10 A We continued trying to get Mr. Merrill's hands out from</p> <p>11 under him.</p> <p>12 Q What did you do? What did you do to attempt to get his</p> <p>13 hands out from under him?</p> <p>14 A I attempted to pull them out. That was not working. I</p> <p>15 gave commands to -- give me your hands. Give me your</p> <p>16 hands. And then once that was not working and we were</p> <p>17 struggling, I pulled out my department issued baton.</p> <p>18 Q Did you use the baton?</p> <p>19 A I did.</p> <p>20 Q Where did you -- I take it when you used the baton, you</p> <p>21 struck Mr. Merrill?</p> <p>22 A I did, on his upper arm.</p> <p>23 Q So is that the left upper arm?</p> <p>24 A Yes.</p> <p>25 Q How many times did you strike him?</p>	<p style="text-align: right;">Page 73</p> <p>1 A I would have to refer to my report. I don't remember. I</p> <p>2 may have. (Examining document). Not that I recall.</p> <p>3 MR. REISING: Have you looked at your report,</p> <p>4 too?</p> <p>5 THE WITNESS: I did. I looked at my report.</p> <p>6 MR. REISING: Okay.</p> <p>7 Q (BY MR. FELTY) Other than Mr. Merrill's arms being under</p> <p>8 his body, what, if any, resistance was there?</p> <p>9 A Before he was placed in custody?</p> <p>10 Q Yes.</p> <p>11 A Just refusing to comply with commands. And he was</p> <p>12 under -- I mean, he was moving around. Like flailing a</p> <p>13 little bit, but...</p> <p>14 Q Well, flailing implies to me arms swinging around?</p> <p>15 A Yeah, okay. So he was just kind of moving around.</p> <p>16 Moving his feet a lot like in a sweeping motion.</p> <p>17 Q What do you mean by a sweeping motion?</p> <p>18 A Just side-to-side.</p> <p>19 Q Was he trying to -- do you know if he was trying to get</p> <p>20 himself up?</p> <p>21 A I don't know what he was trying to do.</p> <p>22 Q All right. So did his arms ever appear as if they were</p> <p>23 attempting to strike anybody?</p> <p>24 A No, I don't believe so.</p> <p>25 Q All right. They were just under his body?</p>

(Pages 70 to 73)

<p style="text-align: right;">Page 94</p> <p>1 east side of the road by the sidewalk.</p> <p>2 Q How many?</p> <p>3 A There was a group. I don't recall how many. Multiple</p> <p>4 people. Maybe five to ten.</p> <p>5 Q Do you know who was yelling, men or women?</p> <p>6 A I believe it was females, but I don't recall.</p> <p>7 Q Was one of them his sister?</p> <p>8 A Possibly. I didn't talk to any of them.</p> <p>9 Q How did you know there was a crowd of people when you are</p> <p>10 down --</p> <p>11 A I could hear them.</p> <p>12 Q -- going through the struggle?</p> <p>13 A I could hear them.</p> <p>14 Q It says, "After more struggle, Merrill was placed in</p> <p>15 handcuffs by other officers"?</p> <p>16 A Correct.</p> <p>17 Q What is the "more struggle"?</p> <p>18 A Just the way he was moving around actively resisting us.</p> <p>19 Just pulling his hands.</p> <p>20 Q So when you're talking about struggle, are you talking</p> <p>21 about him moving his arms around?</p> <p>22 A By struggle I mean failing to comply.</p> <p>23 Q And by failing to comply, is that moving his arms around?</p> <p>24 A Could be.</p> <p>25 Q Is there anything -- this particular incident, the entire</p>	<p style="text-align: right;">Page 96</p> <p>1 A Not that I'm aware of. I did not get struck.</p> <p>2 Q Not saying, "I'm going to kill you"?</p> <p>3 A No.</p> <p>4 Q Not making threats to police officers?</p> <p>5 A Not that I'm aware of, no.</p> <p>6 Q Not biting?</p> <p>7 A No.</p> <p>8 Q No spitting?</p> <p>9 A Not that I'm aware of.</p> <p>10 Q Okay. It says in here, "Placed in handcuffs --"</p> <p>11 A Um-hum.</p> <p>12 Q "-- by other officers."</p> <p>13 A Correct.</p> <p>14 Q "Merrill continued screaming and kicking his feet while</p> <p>15 he was handcuffed on the ground." Is that describing the</p> <p>16 same type of motion?</p> <p>17 A Correct.</p> <p>18 Q He's not kicking an officer?</p> <p>19 A I don't know if anyone got kicked I don't believe.</p> <p>20 Q Did it appear to you in what you were doing that he was</p> <p>21 attempting to kick somebody, or was he just moving?</p> <p>22 A Could have been.</p> <p>23 Q Well, I'm --</p> <p>24 A He could have been. He -- it's hard to describe what he</p> <p>25 was doing. I don't know exactly what his intentions</p>
<p style="text-align: right;">Page 95</p> <p>1 time from you tasing him, let's say from the time he goes</p> <p>2 down to the ground from your taser, struggle or</p> <p>3 resisting, what, other than moving the arms around, are</p> <p>4 you describing?</p> <p>5 A When he was (indicating) like moving his feet around,</p> <p>6 kicking his feet. Vigorously moving his hands back and</p> <p>7 forth. Lifting his shoulders.</p> <p>8 Q Now, the kicking, this was like what motion did you</p> <p>9 describe it as?</p> <p>10 A Like side-to-side, up and down.</p> <p>11 Q Like going back and north?</p> <p>12 A Um-hum.</p> <p>13 Q Side-to-side?</p> <p>14 A Moving rapidly (indicating).</p> <p>15 Q Like wiggling?</p> <p>16 A I guess you could describe it as wiggling. I mean --</p> <p>17 Q I'm more interested in your description. I mean, I was</p> <p>18 just using that as an example.</p> <p>19 A Wiggling, I would -- no, I wouldn't describe it as</p> <p>20 wiggling. It was like vigorous movements.</p> <p>21 Q Okay. Vigorous movements of the arms and legs?</p> <p>22 A Um-hum.</p> <p>23 Q Is that yes?</p> <p>24 A Yes.</p> <p>25 Q But not striking anybody?</p>	<p style="text-align: right;">Page 97</p> <p>1 were.</p> <p>2 Q Okay. Well, he's laying down on the ground still on his</p> <p>3 chest, right?</p> <p>4 A Correct.</p> <p>5 Q And to kick, we generally think, or at least I generally</p> <p>6 think of somebody making a forward type motion and</p> <p>7 kicking somebody?</p> <p>8 A Correct.</p> <p>9 Q And I just want to be clear, you're not suggesting that</p> <p>10 he was --</p> <p>11 A No, because he was on his back. But you can still be</p> <p>12 kicked by kicking up, to the side.</p> <p>13 Q I get that. And are you describing, when you say that</p> <p>14 he's doing that, was he directing a kick at anybody?</p> <p>15 A Not that I know of.</p> <p>16 Q Okay. So he's got him, it says, "Placed in handcuffs by</p> <p>17 other officers." And then it says -- and this was</p> <p>18 handcuffed on the ground? He's still on his chest,</p> <p>19 right?</p> <p>20 A Correct.</p> <p>21 Q And then it says, "R/O then observed Officer --" please</p> <p>22 say that again, Madaj?</p> <p>23 A Madaj.</p> <p>24 Q "-- Madaj and Officer Severs place another set of</p> <p>25 handcuffs on Merrill."</p>

(Pages 94 to 97)

<p style="text-align: right;">Page 114</p> <p>1 A I do not.</p> <p>2 Q Did you ever leave Mr. Merrill's presence after he was</p> <p>3 cuffed?</p> <p>4 A When I spoke with the witness.</p> <p>5 Q That was after he was already in the car?</p> <p>6 A Correct.</p> <p>7 Q What did you do after his feet were tied? What was your</p> <p>8 role?</p> <p>9 A I didn't really have a role at that time.</p> <p>10 Q Did you go anywhere?</p> <p>11 A No.</p> <p>12 Q Did you stand then --</p> <p>13 A I was standing with them, yes.</p> <p>14 Q Standing with who?</p> <p>15 A The other officers and Mr. Merrill.</p> <p>16 Q Did you assist in transporting Mr. Merrill to the squad</p> <p>17 car?</p> <p>18 A Yes.</p> <p>19 Q How did he get transferred, or how was he taken to the</p> <p>20 squad car?</p> <p>21 A He was stood up and he started to walk. I don't remember</p> <p>22 if he walked the whole way. I remember Officer Madaj</p> <p>23 stating -- asked him if he was going to walk, or if he</p> <p>24 was going to have to be carried. And I remember like</p> <p>25 holding his left arm as we walked to the patrol car.</p>	<p style="text-align: right;">Page 116</p> <p>1 backed up and he was put in the car by the other</p> <p>2 officers. He was wide. He had to be turned just to get</p> <p>3 in the car and then placed in the patrol car.</p> <p>4 Q He was put in what side, passenger or driver's side?</p> <p>5 A Driver's side.</p> <p>6 Q All right. And how was he positioned in the car?</p> <p>7 A On his right side, facing down, but turned on his right</p> <p>8 side where his left shoulder was leaning on the cage.</p> <p>9 Q And he was alive at that time?</p> <p>10 A Yes.</p> <p>11 Q He was conscious?</p> <p>12 A Yes.</p> <p>13 Q Was he communicating?</p> <p>14 A He was still -- yeah, he was.</p> <p>15 Q Did he say anything more that you recall after talking</p> <p>16 about being sodomized and raped?</p> <p>17 A Not that I recall exactly what he was saying, no.</p> <p>18 Q Do you recall him saying anything?</p> <p>19 A He was like speaking, yes. But I don't remember what he</p> <p>20 was saying.</p> <p>21 Q Was he mumbling?</p> <p>22 A No.</p> <p>23 Q Do you know what he was speaking about?</p> <p>24 A No, I don't recall.</p> <p>25 Q Did you ask him any questions?</p>
<p style="text-align: right;">Page 115</p> <p>1 Q So did he walk?</p> <p>2 A He started to and I don't -- I don't remember exactly</p> <p>3 what happened.</p> <p>4 Q All right. What did you do to assist him in getting him</p> <p>5 to the car?</p> <p>6 A Just basically holding his left arm.</p> <p>7 Q You held his arm?</p> <p>8 A Correct.</p> <p>9 Q And was somebody holding his right?</p> <p>10 A Yes.</p> <p>11 Q Who was holding --</p> <p>12 A I don't remember which officer it was.</p> <p>13 Q How many officers were on-scene at that time?</p> <p>14 A Four.</p> <p>15 Q Were all four of you together?</p> <p>16 A Yes.</p> <p>17 Q So all four of you walked to the car?</p> <p>18 A I believe so.</p> <p>19 Q Whose car was it?</p> <p>20 A Mine.</p> <p>21 Q And he was put in the back of your car?</p> <p>22 A Correct.</p> <p>23 Q How was he put in the back?</p> <p>24 A I -- when we got at the door, because the door swings</p> <p>25 open, I was on the left. There was no room for me. I</p>	<p style="text-align: right;">Page 117</p> <p>1 A No.</p> <p>2 Q Did you ever ask him how he was?</p> <p>3 A I did not, no.</p> <p>4 Q Did you hear anybody else asking him any questions?</p> <p>5 A No.</p> <p>6 Q Did anybody attempt to interview him while he was on the</p> <p>7 ground in the street?</p> <p>8 A Not that I am aware of, no.</p> <p>9 Q You never left him on the ground?</p> <p>10 A No, I was there. We all were there.</p> <p>11 Q Okay. So he's put in the car and I take it -- your car,</p> <p>12 right?</p> <p>13 A Correct.</p> <p>14 Q Was your car running at this time?</p> <p>15 A Yes.</p> <p>16 Q Is the camera on at this time?</p> <p>17 A I don't believe -- I don't know. I don't believe it was,</p> <p>18 because I had turned it on after I moved the patrol car.</p> <p>19 So I don't believe it was running at that time.</p> <p>20 Q All right. So did you move the car with him in it?</p> <p>21 A Yes.</p> <p>22 Q Where did you move it to?</p> <p>23 A Just off of Washington onto Gilmore. Literally, from</p> <p>24 just pulling around the corner to get off the main road,</p> <p>25 because traffic was backed up.</p>

(Pages 114 to 117)

<p style="text-align: right;">Page 118</p> <p>1 Q Which way was it backed up?</p> <p>2 A Both directions.</p> <p>3 Q How many cars were backed up?</p> <p>4 A I couldn't decipher on that. There was a line of</p> <p>5 traffic.</p> <p>6 Q A long line?</p> <p>7 A I don't recall.</p> <p>8 Q How many people were on-scene, individuals from the</p> <p>9 neighborhood, when you moved the car?</p> <p>10 A I don't remember.</p> <p>11 Q Was there a big crowd?</p> <p>12 A A crowd was starting to gather, yes. I don't remember</p> <p>13 how many people and when exactly they showed up.</p> <p>14 Q All right. In your report it says "Merrill refused to</p> <p>15 get up and walk over to the patrol car so officers had to</p> <p>16 assist him."</p> <p>17 A Correct.</p> <p>18 Q Did he -- I'm not clear, did he walk --</p> <p>19 A When he got up --</p> <p>20 Q -- or did you carry him?</p> <p>21 A -- that's when Officer Madaj said, "Are you going to walk</p> <p>22 or are we going to have to carry you?" We -- I don't</p> <p>23 remember if he kind of did a shuffle or what. But we had</p> <p>24 to -- I remember having a lot of weight on me and</p> <p>25 carrying him over.</p>	<p style="text-align: right;">Page 120</p> <p>1 Q Before Officer Madaj said that he appeared, or discovered</p> <p>2 that he appeared to be unconscious, are you aware of any</p> <p>3 officer going up to the car and going inside and having</p> <p>4 any communication with Mr. Merrill?</p> <p>5 A I don't know. I was speaking to my witness. If one of</p> <p>6 them did, I don't know that they did.</p> <p>7 Q All right. Well, you were speaking to your witness</p> <p>8 within feet from the car?</p> <p>9 A Correct.</p> <p>10 Q Do you think you would have noticed if somebody was</p> <p>11 trying to get in the car?</p> <p>12 A Not necessarily. Because it would have been unlocked</p> <p>13 So if they went to the passenger side of the car, my car</p> <p>14 is facing west, I'm talking over here, they could have</p> <p>15 went into the car and I wouldn't have known. I didn't</p> <p>16 see anybody.</p> <p>17 Q The car would have been unlocked?</p> <p>18 A Correct.</p> <p>19 Q You would have left your car unlocked with a crowd of</p> <p>20 people around and a suspect in it?</p> <p>21 A Yes.</p> <p>22 Q Wouldn't you be paying attention to make sure that nobody</p> <p>23 in the crowd of people were attempting to get --</p> <p>24 A There was other officers around and there was no one</p> <p>25 right by our patrol cars.</p>
<p style="text-align: right;">Page 119</p> <p>1 So he was standing. I don't remember if he was</p> <p>2 doing a little shuffle or what he -- I don't recall</p> <p>3 exactly what he was doing.</p> <p>4 Q All right. So he's put in. The doors are closed?</p> <p>5 A Correct.</p> <p>6 Q This is after you moved the car? Then you moved the car?</p> <p>7 A Then I moved the car.</p> <p>8 Q And then what do you do after you move the car?</p> <p>9 A That's when the witness came up to me. I got out of the</p> <p>10 car. When I moved the car and I was in it, after things</p> <p>11 had settled down, that's when I observed my camera was</p> <p>12 not on. The witness came up and said he wanted to give</p> <p>13 me a statement. I wanted that on camera, so I turned the</p> <p>14 camera on. That's when I got out and took the witness</p> <p>15 statements.</p> <p>16 Q All right. How far away from the car did you take the</p> <p>17 witness statement?</p> <p>18 A Half of the width of a side street.</p> <p>19 Q All right. So you were right by the car.</p> <p>20 A Fifteen feet, ten feet, yeah.</p> <p>21 Q Did anybody, any other officer go into your car?</p> <p>22 A Besides Officer Madaj? Officer Madaj did.</p> <p>23 Q When did Officer Madaj go in?</p> <p>24 A When he went to speak with Mr. Merrill and ultimately</p> <p>25 realized he was in distress, or appeared unconscious.</p>	<p style="text-align: right;">Page 121</p> <p>1 Q Do you know whether any officer went to your car other</p> <p>2 than Officer Madaj?</p> <p>3 A Everyone -- I'm assuming the other officers were there,</p> <p>4 but I don't recall if anyone went into my patrol car, no.</p> <p>5 Q Do you think you would have known if somebody went into</p> <p>6 your patrol car?</p> <p>7 A Not necessarily.</p> <p>8 Q Would that be common for another officer to go in your</p> <p>9 patrol car?</p> <p>10 A Yes.</p> <p>11 Q For what purpose?</p> <p>12 A To speak to people. To speak to a suspect. Check on</p> <p>13 people. It's not uncommon practice.</p> <p>14 Q Were any of the other patrol cars moved?</p> <p>15 A I believe they were all moved out of the street.</p> <p>16 Q So you guys all got into your separate cars and moved</p> <p>17 them?</p> <p>18 A I believe they -- we cleared the road. So, yes, they</p> <p>19 would have had to.</p> <p>20 Q Do you know where the other cars were positioned?</p> <p>21 A I do not.</p> <p>22 Q You spoke with the witness and then what do you do?</p> <p>23 A After -- after I spoke with the witness, that's when</p> <p>24 Officer Madaj advised that -- of what he observed with</p> <p>25 Mr. Merrill and he needed to be taken out of the car and</p>

(Pages 118 to 121)